

EASTERN DISTRICT OF TEXAS

CIVIL ACTION NO. 1:09-CV-214

KENT DICKERSON, *et al.*,

Defendants.

1 Plaintiff also states his life is in danger. However, as the magistrate judge correctly determined, the factual allegations set forth in the complaint fail to demonstrate plaintiff was in imminent danger of serious physical injury at the time he filed the complaint. See *Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998).

would like to have mailing information so that he can contact his family so they may arrange to pay the filing fee.

Because Plaintiff is not proceeding *in forma pauperis*, § 1915(g) is not applicable to this case. However, the clerk of court is required to collect the full \$350 filing fee before accepting a complaint for filing in cases where the plaintiff is not authorized to proceed without prepayment of fees pursuant to 28 U.S.C. § 1915. *See* Local Rule CV-4(a). While Plaintiff states he wants to pay the filing fee, the fact remains that he did not pay the filing fee when he filed the complaint. Further, Plaintiff has failed to exercise due diligence during the time this action has been pending. Accordingly, the complaint should be dismissed without prejudice as improvidently filed.

O R D E R

Accordingly, Plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED** to the extent it recommends dismissal without prejudice. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 21st day of July, 2009.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE